IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1970

No. 913

CHARLES KOEN, PERCY GREEN, RICHARD P. KOCH, and JOEL ALLEN,
Petitioners,

vs.

ISAAC A. LONG, WILLIAM H. HARRISON, EDWARD J. WALSH, JR., CLIFTON W. GATES, ALFONSO J. CERVANTES, CURTIS BROSTROM, FRED GRIMES, THOMAS SHANNON, GARY GAERTNER, HONORABLE GEORGE CADY and HONORABLE RICHARD BROWN, JAMES L. SANDERS and VINCENT G. ROGERS,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

MEMORANDUM IN OPPOSITION FOR RESPONDENTS LONG, HARRISON, WALSH, GATES, CERVANTES, BROSTROM, GRIMES, SANDERS, AND ROGERS

Respondents Long, Harrison, Walsh, Gates, Sanders, and Rogers are past and present members of the Board of Police Commissioners of the City of St. Louis. As

Mayor of St. Louis, respondent Cervantes is and was an *ex officio* member of said Board. Respondent Brostron was Chief of the St. Louis Police Department and respondent Grimes was a Lieutenant in that department.

With respect to these respondents, petitioners sought to show a pattern of harassment and interference with their exercise of First Amendment rights of free expression. The effort simply failed. The "four days of testimony by more than thirty witnesses" referred to at page 24 of the Petition resulted in a showing summarized by the district court as follows, at 302 F. Supp. 1383, 1397:

> "Plaintiffs' evidence here shows a total of arrests on 17 occasions (each unrelated) during the three years about which testimony was adduced. Of these 17, only arrests on 8 occasions related arguably to exercise of first amendment rights. Of these arrests, most were based on the peace disturbance ordinance. At the same time, the evidence from witnesses such as Allen, Koch and the Reverend Witte demonstrates that there were during the same period of time literally hundreds of 'civil rights demonstrations' which occurred from the evidence without incidence."

While some of the testimony could be argued to show that, on isolated occasions, individual officers may have responded to provocation with intemperate language or with more physical force than necessary, it could not by any fair reading be interpreted as showing a pattern of harassment as petitioners have repeatedly claimed below. Note the language of the district court at 302 F. Supp. 1383, 1398:

> "The police conduct described in this record is far more compatible with a sincere, good faith effort to prevent riot and fight crime than with that urged by plaintiffs. The area in which most of the incidents

> occurred is one of the high crime areas of this city (Deposition of Brostron). If overzealous reaction is apparent on the record in some cases, it is only because of the situation in which, of course, police officers are found to be only human. The appearance of testimony that certain police officers have resorted to insult and profanity, and to rough handling of recalcitrant suspects, which acts are contrary to the standing orders of these defendants (Deposition of Brostron, p. 4), is not sufficient to warrant federal judicial intervention."

Moreover, petitioners' claim that their evidence of "police and prosecutional abuse . . . was uncontradicted" is in error. At the request of petitioners' counsel, the depositions of respondents Police Board President Long, Chief Brostron, and Lieutenant Grimes were made a part of the record. The testimony of these witnesses flatly contradicts the contention that the St. Louis police were at any time motivated by bad faith in the performance of their duties and clearly refutes evidence presented by petitioners concerning specific instances of claimed misconduct by police. These instances are thoroughly discussed in the Brief filed by these respondents in Court of Appeals for the Eighth Circuit, and a re-examination of such evidence at this point would serve little good.

Suffice it to say that petitioners now seek to come before this Court in a factual vacuum, seeking what would be at best an advisory pronouncement on their exercise of First Amendment rights. As indicated herein and as articulated in far greater detail in the opinion of the district court, the truth of the matter is that petitioners simply have not suffered any impairment of their rights warranting federal intervention.

It is therefore respectfully submitted that the petitioners have not and cannot make a case of "special and important

reasons" for granting a writ of certiorari as contemplated by Rule 19 and that the petition should be denied.

Respectfully submitted

LASHLY, CARUTHERS, RAVA, HYNDMAN & RUTHERFORD

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